

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
AT BECKLEY**

MICKEY DANIEL, JR.,

Petitioner,

v.

CIVIL ACTION NO. 5:20-cv-00675

SHELBY SEARLS, Superintendent,
Huttonsville Correctional Center,

Respondent.

ORDER

Pending is Respondent Shelby Searls's Motion to Dismiss [Doc. 10], filed November 1, 2021. This action was previously referred to the Honorable Dwane L. Tinsley, United States Magistrate Judge, for submission of proposed findings and a recommendation ("PF&R"). Magistrate Judge Tinsley filed his PF&R on July 25, 2022. Magistrate Judge Tinsley recommended that the Court deny the Motion to Dismiss, grant the parties' joint request for a stay and abeyance [Doc. 11 at 14; Doc. 14 at 3–4], stay this action, and hold in abeyance Petitioner Mickey Daniel, Jr.'s § 2254 petition pending Mr. Daniel's attempted exhaustion of available state court remedies concerning his unexhausted claims.

The Court need not review, under a de novo or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. *See Thomas v. Arn*, 474 U.S. 140 (1985); *see also* 28 U.S.C. § 636(b)(1) ("A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations *to which objection is made.*" (emphasis added)). Failure to file timely objections constitutes a waiver of de novo review and the Petitioner's

right to appeal the Court's order. *See* 28 U.S.C. § 636(b)(1); *see also United States v. De Leon-Ramirez*, 925 F.3d 177, 181 (4th Cir. 2019) (Parties may not typically “appeal a magistrate judge’s findings that were not objected to below, as § 636(b) doesn’t require de novo review absent objection.”); *Snyder v. Ridenour*, 889 F.2d 1363, 1366 (4th Cir. 1989). Further, the Court need not conduct de novo review when a party “makes general and conclusory objections that do not direct the Court to a specific error in the magistrate’s proposed findings and recommendations.” *Orpiano v. Johnson*, 687 F.2d 44, 47 (4th Cir. 1982). Objections in this case were due on August 11, 2022. No objections were filed.

Accordingly, the Court **ADOPTS** the PF&R [**Doc. 18**], **DENIES** the Motion to Dismiss [**Doc. 10**], **GRANTS** the parties’ joint request for a stay and abeyance [**Docs. 11 at 14; 14 at 3–4**], **STAYS** this action, and **HOLDS IN ABEYANCE** Petitioner’s § 2254 Petition for Writ of Habeas Corpus [**Doc. 3**], pending exhaustion of available state court remedies concerning Petitioner’s unexhausted claims.

The Court further **DIRECTS** the Clerk to transfer this matter to the inactive docket pending further order of the Court. Petitioner is **ORDERED** to notify the Court and Respondent within 14 days of the resolution of his current state habeas proceedings concerning the result thereof and his intent to proceed with this matter.

The Court directs the Clerk to transmit a copy of this Order to any counsel of record and any unrepresented party.

ENTER: September 19, 2022



Frank W. Volk
 Frank W. Volk
 United States District Judge